UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

PEDRO ROSSELLO, et al., Plaintiffs, v. BROWN & WILLIAMSON, et al., Defendants	CIVIL CASE NO. 97-1910 (JAF)

DEFENDANT OPMS' FOURTH SUBMISSION OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF MOTION TO ENFORCE THE ARBITRATION PROVISIONS OF THE MSA AND COMPEL ARBITRATION

TO THE HONORABLE COURT:

COME NOW Philip Morris USA Inc., R.J. Reynolds Tobacco Company and Lorillard Tobacco Company (the "OPMs"), through their undersigned counsel, and respectfully submit the following appellate court decisions compelling arbitration in support of the OPMs' "Motion to Enforce the Arbitration Provisions of the Master Settlement Agreement and Compel Arbitration." (Docket Nos. 262, 263.)

1. On April 17, 2007, the Delaware Supreme Court affirmed the trial court's order compelling arbitration, holding that the Master Settlement Agreement "compels arbitration to determine the issue of diligent enforcement," and noting that the parties "voluntarily entered into an Agreement with plain language compelling arbitration in matters concerning the operation or application of adjustments based on each jurisdiction's qualifying statute." *Delaware v. Philip Morris, USA, Inc.*, C.A. No. 657,2006, slip op. at 2 (Del. April 17, 2007) (Ex. 1).

2. On April 23, 2007, the Supreme Judicial Court of Massachusetts affirmed the trial court's order dismissing the State's motion and compelling arbitration, holding that "th[e] dispute falls squarely under the arbitration provision of the settlement agreement." *Commonwealth v. Philip Morris Inc.*, 448 Mass. 836, 849 (2007) (Ex. 2).

3. On May 24, 2007, the Arizona Court of Appeals affirmed the trial court's order compelling arbitration, holding that the Arbitration Clause "authorizes arbitration of '[a]ny dispute, controversy or claim arising out of or relating to calculations

performed by, or any determinations made by, the Independent Auditor," including "without limitation, any dispute concerning the operation or application of any of the adjustments . . . described in subsection IX(j)," which in turn "lists the various adjustments," including the NPM Adjustment and the diligent enforcement exemption from that Adjustment. *Arizona v. Philip Morris Inc.*, No. 07-0083, slip op. at 9 (Ariz. Ct. App. May 24, 2007) (Ex. 3).

4. On June 7, 2007, the New York Court of Appeals affirmed the decision of the Appellate Division compelling arbitration, concluding that "[t]he plain language of the MSA compels arbitration," that "[b]y using the expansive words 'any' and 'relating to,' the MSA makes explicit that all claims that have a connection with the Independent Auditor's calculations and determinations are arbitrable," and that because the parties' dispute regarding the NPM Adjustment and subsidiary diligent enforcement issue "constitute claims 'relating to' the Independent Auditor's calculations and determinations," "[t]he arbitration provision . . . . 'expressly and unequivocally encompasses the subject matter of the particular dispute.'" *New York v. Philip Morris Inc.*, No. 72, slip op. at 6-8 (N.Y. June 7, 2007) (Ex. 4).

5. On June 7, 2007, the Michigan Court of Appeals affirmed the trial court's decision compelling arbitration of the parties' dispute regarding the NPM Adjustment, including the diligent enforcement exemption to that Adjustment. The Court found that "[b]ased on the unambiguous language of the Agreement, . . . arbitration of this dispute is plainly required." *Michigan v. Philip Morris USA*, No. 273665, slip op. at 5 (Mich. Ct. App. June 7, 2007) (Ex. 5).

6. On June 7, 2007, the North Dakota Supreme Court reversed the lone decision cited by the State denying arbitration and remanded for entry of an order compelling arbitration. The Court held that "the plain and unambiguous language of the parties' settlement agreement requires arbitration of their dispute over application of the diligent enforcement exemption to the agreement's non-participating manufacturer adjustment." *North Dakota v. Philip Morris Inc.*, Nos. 20060207 & 20060213, slip op. at 1 (N.D. June 7, 2007) (Ex. 6).

With these decisions, which are offered as supplemental authority, all eight appellate courts to consider the issue have held that this dispute must be arbitrated.

Finally, on May 31, 2007, a Louisiana trial court issued an order denying the OPMs motion to compel arbitration. *Foti v. Philip Morris*, No. 1998-6473 (La. Dist. Ct. May 31, 2007) (Ex. 7). It is now the lone decision to do so; courts in 43 of the 44 jurisdictions to consider the issue have held that arbitration of this dispute — including the issue of diligent enforcement — is required by the plain and unambiguous language of the MSA Arbitration Clause.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 14th day of June, 2007.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notice to the following: Benjamin Acosta, Jr., Francisco A. Besosa, Edgardo Cartagena Santiago, Jose A. Fuentes Agostini, William A. Graffam, Manuel A. Guzman Rodriguez, Paul H. Hulsey, Juan A. Ramos Diaz,

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